

Department of Legislative Services
Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 632 (Senator Jacobs and the President, *et al.*)(By Request – Administration and Attorney General)

Judicial Proceedings

Judiciary

Maryland Gang Prosecution Act of 2007

This Administration bill creates new offenses regarding criminal gangs. The Attorney General is authorized to aid in the investigation or prosecute violations of this bill.

By January 1, 2008, the Attorney General and the Maryland State Attorneys’ Association must report to the General Assembly on recommendations for more legislation to assist prosecution of gang activity.

Fiscal Summary

State Effect: General fund expenditures would increase by \$396,300 in FY 2008 for five additional staff at the Office of the Attorney General (OAG). Future year estimates reflect annualization and inflation. The proposed FY 2008 budget includes \$454,696 for these five positions. Possible increase in general fund expenditures and revenues due to the bill’s penalty provisions.

| (in dollars) | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 396,300 | 575,500 | 609,600 | 635,100 | 661,900 |
| Net Effect | (\$396,300) | (\$575,500) | (\$609,600) | (\$635,100) | (\$661,900) |

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Minimal increase in revenues and expenditures due to the bill’s penalty provisions.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Bill Summary: This bill prohibits a person from (1) participating in a criminal gang knowing that the members of the gang engage in an ongoing pattern of criminal gang activity; or (2) knowingly or willfully directing or participating in the commission of an underlying crime committed for the benefit of, at the direction of, or in association with a criminal gang.

“Criminal gang” is defined as a group or ongoing association of three or more persons whose members:

- individually or collectively engage in a pattern of criminal gang activity;
- have as one of their primary objectives or activities the commission of one or more underlying crimes, including acts by juveniles that would be underlying crimes if committed as adults; and
- have in common an identifying sign, symbol, name, leader, or purpose.

“Pattern of criminal gang activity” is defined as the commission of, attempted commission of, conspiracy to commit, or solicitation of two or more underlying crimes among the following list of felonies:

- Abduction
- Arson in the first or second degree, or threat of arson
- Kidnapping
- Manslaughter
- Mayhem
- Maiming
- Murder
- Rape
- Robbery in the first or second degree
- Carjacking or attempted carjacking
- Sexual offense in the first or second degree

- Attempt to commit a violent crime
- Assault in the first or second degree, assault by inmate, or assault with intent to murder, rape, rob, or commit a first or second degree sexual offense
- Manufacturing or possessing of destructive device
- Extortion
- Manufacturing or distributing a controlled dangerous substance
- Burglary in the first, second, or third degree
- General theft or motor vehicle theft
- Obstruction of justice
- Retaliation for testimony or intimidating or corrupting a juror
- Illegal possession of a firearm

A violator is guilty of a felony and subject to imprisonment not exceeding 10 years, or 20 years if death to a victim occurs, and/or a fine not exceeding \$100,000. A sentence imposed under this section may run consecutive to or concurrently with a sentence for any crime establishing a violation of this act. A person may be charged with a violation of this section only by indictment, criminal information, or petition alleging a delinquent act.

The Attorney General is authorized, at the request of a county State's Attorney, to aid in the investigation of a violation of this bill or to prosecute a violation of this bill. In exercising this authority, the Attorney General has all powers and duties of State's Attorney. Where violations of this bill are alleged to have been committed in more than one county, the Attorney General and State's Attorney for each county may join the causes of action in single complaint.

Current Law: Chapter 313 of 2005 created several new offenses related to criminal gang activity. Prior to the passage of this Act, statute did not directly address participation in criminal gang activity.

Under Chapter 313, a person is prohibited from threatening an individual, or a friend or family member of an individual, with physical violence with the intent to coerce, induce, or solicit the individual to participate in or prevent the individual from leaving a criminal gang. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for two years and/or a fine of \$1,000.

A person is also prohibited from making such threats in a school vehicle or within 1,000 feet of a school. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for four years and/or a \$4,000 fine. Chapter 313 also authorizes prior

felony or misdemeanor convictions, if related to the defendant's membership in a criminal gang, to be included in a presentence investigation report for a court by the Division of Parole and Probation.

Background: The proliferation of gang activity in Maryland had prompted several initiatives designed to address the problem.

In May 2006, the U.S. Attorney General provided \$30 million in grants to the states through its Project Safe Neighborhoods (PSN) program to support anti-gang efforts nationwide and requested that U.S. Attorneys throughout the nation host local Gang Prevention Summits. A Maryland Gang Summit was held in June 2006. At the summit, the Governor announced the establishment of a coordinating committee to create a statewide database of gang activity in order to adequately assess the extent of the gang problem. Maryland has secured \$2 million in federal funds other than PSN grants to create a statewide anti-gang initiative.

The Governor's Office of Crime Control and Prevention and the Maryland U.S. Attorney's Office offered \$15,000 grants for counties to assess local gang-related problems and develop a strategy to address them. Thus far, 12 counties and Baltimore City have applied for the grants.

Noting the growing organization structure of gangs, federal prosecutors are increasingly opting to prosecute gang members under the Racketeering Influences and Corrupt Organizations Act (RICO), enacted in 1970 and traditionally used against the Mafia. To obtain a RICO conviction, prosecutors must prove that the crimes committed by the gang members were part of an organized criminal enterprise. In August 2005, 22 members of the predominantly West-coast gang MS-13 were indicted in Maryland on federal racketeering and other related charges, including murder, assault, and rape. Many states, including California, Florida, New Jersey, and Washington have enacted "mini-RICOs" to address gang problems at the state level.

Under California's criminal law provisions, any person who actively participates in any criminal street gang activity with knowledge that its members engage in a pattern of such activity, and who willfully assists in any felonious criminal conduct by members of that gang, is subject to imprisonment for up to three years. California similarly prohibits the solicitation or recruitment of persons to participate in criminal street gang activity; the use of threats of physical violence two or more times in a 30-day period with the intent to coerce, induce, or solicit participation in a criminal street gang; and the actual use of physical force for such ends.

State Fiscal Effect:

Attorney General's Office: OAG would require three additional attorneys and two additional support staff to prosecute and investigate offenses under this bill. General fund expenditures could increase by an estimated \$396,348 in fiscal 2008, which accounts for the bill's October 1 effective date. This estimate reflects the salaries and fringe benefits cost of hiring these five staff in the OAG.

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|----------------------------------|------------------|
| Salaries | \$305,858 |
| Fringe Benefits | 88,226 |
| Other Operating Expenses | <u>43,738</u> |
| Total FY 2008 Expenditure | \$396,348 |
| Positions | 5 |

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Division of Correction (DOC): General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to DOC facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of these proposed crimes is not expected to be large enough to significantly impact DOC finances.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,262 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$465 per month. Excluding medical care, the average variable costs total \$134 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2007 are estimated to range from \$21 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Judiciary (Administrative Office of the Court): Any additional caseload resulting from additional prosecutions could be handled with existing resources.

Local Fiscal Effect: Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$42 to \$120 per inmate in fiscal 2007. Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Additional Information

Prior Introductions: None.

Cross File: HB 713 (The Speaker)(By Request – Administration, Attorney General, and Maryland State Attorney's Association) – Judiciary.

Information Source(s): Prince George's County, Montgomery County, Patuxent Institution, Office of the Attorney General, Department of Public Safety and Correctional Services (Division of Correction), Judiciary (Administrative Office of the Courts), Department of Legislative Services

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